

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BINA SHAHANI,

Petitioner,

v.

Civ. No. 06-0267 JCH/KBM

JOHN NAVANI,

Respondent.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Petitioner Bina Shahani's Motion to Alter or Amend Judgment, filed June 14, 2006 [**Doc. No. 12**]. The Court, having considered the motion, briefs, and relevant law, and being otherwise fully informed, finds that the Motion is not well taken and will be **DENIED**.

DISCUSSION

In a related case brought by Mr. Navani seeking return of the minor child to his country of habitual residence pursuant to the Hague Convention of the Civil Aspects of International Child Abduction ("Hague Convention case"), this Court ordered the return of the minor child to London, England by June 15, 2006. *See In re the Application of John Navani v. Bina Shahani*, Civ. No. 06-191 JCH/LFG, Findings of Fact and Conclusions of Law, filed Mar. 31, 2006.

On March 31, 2006, the same day the Court entered its order of return, Ms. Shahani filed a Petition for Order of Protection from Domestic Abuse in New Mexico state district court pursuant to the New Mexico Family Violence Protection Act, NMSA §§ 40-13-1 *et seq.* *See Shahani v. Navani*, D-0101-DV-2006-00221, State of New Mexico, First Judicial District Court.

That same day, the state district court entered an *ex parte* Temporary Order of Protection and Order to Appear.¹ Mr. Navani thereafter removed the case to this Court. The case originally was assigned to Magistrate Judge Torgerson, but the case was transferred to this Court. On April 5, 2006, Mr. Navani filed motions to consolidate this case with the Hague Convention case. Ms. Shahani, in turn, filed the Motion for Remand and Lack of Subject Matter Jurisdiction.

In the Hague Convention case, Ms. Shahani filed a Motion for a New Trial on April 14, 2006, asking the Court to reconsider its decision to return the minor child to England based upon the alleged new evidence of child abuse at issue here, in the New Mexico Family Violence Act case. The Court conducted a hearing on the Motion for a New Trial on May 25, 2006. On May 26, 2006, the Court denied Ms. Shahani's Motion for a New Trial, finding that Ms. Shahani's allegations that form the basis for the Motion for a New Trial (and the Family Violence Act Petition for an Order of Protection at issue here) were not credible. Therefore, the March 31, 2006, Order issued in the Hague Convention case requiring return of the minor child to England by June 15, 2006, is still in effect.

On May 4, 2006, Ms. Shahani filed a Motion for Remand for Lack of Subject Matter Jurisdiction, filed May 4, 2006. In that Motion, Ms. Shahani asked the Court to remand the New Mexico Family Violence Act case to state court on the ground that the Court lacks subject matter jurisdiction to hear this case. Ms. Shahani also asked the Court to award attorneys' fees and costs. On May 31, 2006, the Court granted Ms. Shahani's Motion to Remand. The Court's May 31, 2006, Memorandum Opinion and Order did not address Ms. Shahani's request for attorneys'

¹ The state court entered the Temporary Order of Protection after this Court entered its order in the Hague Convention case requiring the return of the minor child to England.


fees and costs.

Ms. Shahani asks the Court to alter or amend its May 31, 2006, Memorandum Opinion and Order by awarding her attorneys' fees and costs pursuant to 28 U.S.C. Section 1447(c). Section 1447(c) provides in relevant part, "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." The decision whether to award attorneys' fees and costs is discretionary. The Court declines to amend its May 31, 2006, Memorandum Opinion and Order by awarding Ms. Shahani attorneys' fees and costs.

CONCLUSION

IT THEREFORE IS ORDERED that Petitioner Bina Shahani's Motion to Alter or Amend Judgment, filed June 14, 2006 [**Doc. No. 12**], is hereby **DENIED**.

Dated this 5th day of December 2006.


JUDITH C. HERRERA
UNITED STATES DISTRICT JUDGE